XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(19)

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

HON'BLE MR. L.C. BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.412/2001

APPELLANT Dilipram, son of Siboram Dhobi, Caste Dhobi, aged 22 years, Occupation-Agriculturist, resident of Village Majhiyadih, P.S. Farsabahar, Tehsil Kunkuri, District Jashpurnagar (C.G.)

Vs

RESPONDENT State of Chhattisgarh through P.S. Farsabahar, Tehsil Kunkuri, District Jashpurnagar.

Present:
Dr. Shailesh Ahuja, Advocate for the appellant.
Mr. U.N.S. Deo, Addl. Public Prosecutor for the respondent-State.

ORAL JUDGMENT

(11th June, 2007)

Per L.C. Bhadoo, J:

This appeal is directed against the judgment of conviction and order of sentence dated 12th February, 2001 passed by learned Additional Sessions Judge, Jashpurnagar in S.T.No.81/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the IPC,

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sentenced him to undergo R.I. for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for three months.

Case of the prosecution, in brief, is that Gono Bai @ Janmati Bai gave birth to a child Kartikram out of her illicit relations with the accused. When Gono Bai @ Janmati Bai was in the advance stage of pregnancy a village Panchayat was convened by her father in which father of the accused was present and as per decision of the panchayat, two acres of land was given to Gono Bai @ Janmati Bai. On 1.2.2000 at about 7.30 p.m. when the boy Kartikram, aged about 3 months, was in the lap of Gansibai Sarthi (PW-4), sister of mother of deceased, the accused came covered his body with a Chaddar. He snatched the boy from the lap of Gansibai (PW-4) and after some time he handed over the child to Savitri Bai (PW-2), grand mother of child, who immediately noticed that there was no movement in the body of child and his neck was rotating, therefore, she immediately called her son Banchharam (PW-1), who saw the child and found that the child was already dead. A meeting of village panchayat was called and on the next day morning Banchharam lodged the report (Ex.P-1) in the Police Station Farsabahar. After registering the case, the Investigating Officer left for the scene of occurrence and after giving notice to the Panchas prepared inquest over the body of deceased Kartikram, child

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of Janmati Bai. He also prepared the site plan and sent the body for postmortem examination to Primary Health Centre, Farsabahar, where Dr. Gopal Singh Paikra (PW-6) conducted postmortem, prepared the report Ex.P-2 and opined that the cause of death is asphyxia due to blockage of air passage by throttling and nature of death is homicidal.

After completion of usual investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Jashpurnagar, who in turn committed the case to learned Sessions Judge, Raigarh from where learned Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish the charge against the accused/appellant examined seven witnesses. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied going to the house of Janmati Bai. However, he admitted that deceased Kartikram was his son, how he died he does not know, he had not committed his murder. He has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused/appellant, as aforementioned.

We have heard Dr. Shailesh Ahuja, Advocate for the appellant and Mr. U.N.S. Deo., Addl. Public Prosecutor for the respondent/State.

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आदेश पत्रक (पूर्वानुबद्ध)

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As far as the question of homicidal death of Kartikram is concerned, the same has not been disputed by learned counsel for the appellant. Moreover, Dr. Gopal Singh Paikra (PW-6) has stated that on 3.2.2000 he was working as Assistant Surgeon in the Primary Health Centre, Farsabahar, on that day at about 8.30 a.m. body of Kartikram, son of Janmati Bai, aged about 3 months, was brought to him by Constable Ravilal of Police Station Farsabahar for postmortem examination. On examination, he found that eyes & mouth of Kartikram were closed and reddishness & swelling was present on both the sides of neck. On dissection, he noticed that there were congestion beneath the swelling, brain & lungs were also congested. He opined that cause of death was asphyxia and nature of death was homicidal and his report is Ex.P-2. In the cross-examination of this witness the defence has not been able to elicit any circumstance to discredit the evidence of this witness. Apart from that, Gansibai Saarthi (PW-4) has stated that on the fateful day Kartikram, aged about 3 months, was in her lap, at that time the accused came and asked her to handover the child to him but she refused to handover, on which accused snatched the child, at that time the accused was covering his body with a Chaddar. He went towards the wall and sat on the wall. After some time he handed over

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the child to Savitri Bai (PW-2), then they saw that the child was already dead.

In view of the above medical & ocular evidence, it is established that that death of Kartikram was homicidal in nature.

As far as involvement of the accused/appellant in the crime in question is concerned, Janmati Bai (PW-5) has stated that she and accused were having affairs and on account of their illicit relations she gave birth to Kartikram. This fact has not been disputed by the accused rather he has admitted in his statement under Section 313 of Cr.P.C. that Kartikram was his son, but he has denied about his involvement in commission of murder of Kartikram. Even PW-1 Banchharam has stated that Janmati Bai is his daughter, accused & Janmati were having affairs, Janmati disclosed this fact to him that she is pregnant by eight months from accused Dilip, therefore, he convened a meeting in the village in which accused did not appear but his father appeared and admitted that Janmati Bai is pregnant due to illicit relations between Janmati & Dilip. He agreed to give two acres of land to Janmati Bai. Therefore, it is an admitted fact that Gono Bai @ Janmati Bai gave birth to Kartikram out of illicit relations between her and accused Dilip.

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PW-4 Gansibai Saarthi, sister of mother of deceased, has stated that on the fateful day & time in the evening Kartikram was in her lap, at that time accused came and asked her to handover the child to him, which she refused, on which the accused snatched the child from her. At that time the accused was covering his body with a Chaddar. He took the child towards a wall and sat on the wall. At that time his sister was eating food, therefore, she went to give water to her. Accused handed over the child to Savitri Bai on which they saw that the child was already dead.

PW-2 Savitri Bai has corroborated the above evidence of Gansibai (PW-4) and stated that on the fateful day at about 7-8 p.m. in the evening child Kartikram was with Dilipram and thereafter he handed over the child to her. She also saw that the accused took the child from Gansibai. She has further stated that the accused ran away after handing over the child to her. When she took the child in her lap she saw that there was no movement in the body of child and his neck was rotating. She immediately called her son Banchharam, who saw the child and noticed that the child was already dead, therefore, a panchayat was convened and thereafter the matter was reported in the police station.

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The evidence of above two witnesses has further been corroborated by Banchharam (PW-1), who lodged the report.

Learned counsel for the accused/appellant argued that in the cross-examination, Savitri Bai (PW-2) has stated that on the fateful day the accused did not come to her house and therefore, the presence of the accused at the residence of Janmati Bai at the time of commission of crime is not established.

It is true that in the last line of cross-examination PW-2 Savitri Bai has stated that on the fateful day accused did not come to their house, but about her evidence in the examination-in-chief she has not been cross-examined to the effect that the accused had not snatched the boy from Gansibai (PW-4) or that he did not handed over the boy to Savitri Bai. Moreover, the evidence of PW-4 Gansibai Saarthi is clear and cogent to the effect that at the time of incident the boy was in her lap, the accused came and snatched the boy from her lap and went towards the wall where he sat on the wall and his body was covered with a Chaddar. The evidence of these two witnesses has been corroborated by PW-1 Banchharam.

Therefore, in light of the evidence of above witnesses and totality of evidence, if the argument advanced by learned counsel for

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the appellant is scrutinized, then the same has no merit that the accused was not involved in the crime in question.

From the scrutiny of evidence of Gansibai Saarthi (PW-4), Savitri Bai (PW-2) & Banchharam (PW-1), it is established that on the fateful day and time Gansibai was holding the deceased boy in her lap, at that time the accused/appellant came there and snatched the boy from the lap of Gansibai, took him towards the wall and thereafter he handed over the child to Savitri Bai (PW-2), who immediately noticed that there was no movement in the body of Kartikram and his neck was rotating and therefore, called her son Banchharam, who also came on the scene and saw that the boy was already dead. Therefore, from the above evidence it is established that the accused was the person responsible for committing murder of Kartikram. Moreover, in the cross-examination of the above witnesses, the defence has not been able to bring anything on record which suggest that when the deceased boy was snatched by the accused from Gansibai, he was already dead or somebody else has pressed the neck of the body, as has been established by the medical & ocular evidence that the deceased boy Kartikram had died on account of asphyxia due to pressing of neck.

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	For the foregoing reasons, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial court, the appeal of the appellant being devoid of any substance is liable to be dismissed and the same is hereby dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

Roshan/-